

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

1011 N. GRANDVIEW AVENUE
GLENDALE, CA 91201
(818) 551-2800

COPY



March 14, 1994

CERTIFIED MAIL

Mr. Mackey J. Real, Jr., GM-15 USAF
Chief, Environmental Management
Department of the Air Force
Headquarters 30th Space Wing
Vandenberg Air Force Base, CA 93437-6021

Dear Mr. Real:

IN THE MATTER OF: Vandenberg Air Force Base, EPA ID# CA 9570025149

Enclosed please find an Enforcement Order and related documents concerning violations of Chapter 6.5 Division 20 of the California Health and Safety Code and Title 22 of the California Code of Regulations.

As indicated in the enclosures, you have a right to a hearing. Whether or not you choose to pursue an appeal, you are encouraged to explore the possibility of settlement by contacting Larry Stuck, at the address listed above, telephone number (818) 551-2930.

Sincerely,

A handwritten signature in cursive script that reads 'Roy Yeaman'.

Roy Yeaman, Unit Chief
Facilities Management Branch

Certified Mail
P 142 991 864
Return Receipt Requested

Enclosures

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:) Docket No. DO 93/94-3-3009
)
Vandenberg Air Force Base) ENFORCEMENT ORDER
)
30th Space Wing/ET)
)
Bldg 7015, Section 1B)
)
806 13th Street, Suite J)
)
Vandenberg AFB, CA 93437-5242)
)
EPA ID # CA 9570025149)
)
Respondent.) Health and Safety Code
Sections 25187

INTRODUCTION

1.1. Parties. The State Department of Toxic Substances Control (Department) issues this Enforcement Order (Order) to Vandenberg Air Force Base. (Respondent).

1.2. Site. Respondent generates, handles, treats, and stores and/or disposes of hazardous waste at the following site: Vandenberg Air Force Base, California 93437-5000 (Site).

1.3. Treatment, Storage or Disposal Facility. The Respondent is an Air Force Base which as a result of normal operations generates large amounts of hazardous waste. Respondent has an Interim Status Document (ISD) authorizing storage up to one year at their main storage facility and is seeking a Resource Conservation and Recovery Act of 1976 (RCRA) permit to treat and store hazardous waste. Besides storing hazardous wastes, the Respondent operates unauthorized silver recycling units, an open burn/open detonation (OB/OD) range under a RCRA ISD and two fluorescent light bulb

1 crushers. Respondent also treats non-hazardous wastewater
2 under a California State Water Board Permit and is applying
3 to the Department for a permit to treat hazardous wastewater.

4 1.4. Jurisdiction. Section 25187 of the Health and
5 Safety Code (HSC) authorizes the Department to order
6 corrective action and assess a penalty when the Department
7 determines that any person has violated specified provisions
8 of the Health and Safety Code or any permit, rule, regulation,
9 standard or requirement issued or adopted pursuant thereto.

10 1.5. Exhibits. All exhibits attached to this Order are
11 incorporated herein by this reference.

12
13 DETERMINATION OF VIOLATIONS

14 2. The Department has determined:

15 2.1. On or about December 22-23, 1992, Respondent
16 violated Title 22, California Code of Regulations (Cal. Code
17 Regs.), section 66262.34 (f)(1) and (f)(3) in that Respondent
18 failed to follow labelling requirements, to wit, Respondent
19 stored 4 drums of hazardous waste with no accumulation start
20 dates on the labels. Three hazardous waste accumulation
21 containers at the civil engineering (CE) paint shop did not
22 have hazardous waste labels attached. There were at least 40
23 drums at the main storage facility containing hazardous waste
24 which were not labelled with the composition and physical
25 state of the waste and hazardous properties of the waste.

26 2.2. On or about December 23, 1992, Respondent violated
27 Title 22, Cal. Code Regs., section 66262.20 in that Respondent

1 failed to include the transporter's identification number on
2 three manifests and the transporter's phone number on one
3 manifest.

4 2.3. On or about December 23, 1992, Respondent violated
5 Title 22, Cal. Code Regs., section 66265.15 (d) in that
6 Respondent failed to include the time of inspections and the
7 date and nature of any repairs or remedial action in the
8 inspection logs. There were nine entries in inspection logs
9 which did not include the time of inspection listed and one
10 entry which did not include the date and nature of the repair
11 noted at the ISD storage facility.

12 2.4. On or about December 22-23, 1992, Respondent
13 violated Title 22, Cal. Code Regs., section 66270.1 (c) in
14 that Respondent has been operating as a treatment and storage
15 facility without a permit or variance issued by the
16 Department, in that, Respondent is operating a fluorescent
17 light bulb crushing unit and silver recycling units.
18 Respondent does not have authorization to operate these units.

19 SCHEDULE FOR COMPLIANCE

20
21 3. Based on the foregoing DETERMINATION OF VIOLATIONS,
22 IT IS HEREBY ORDERED THAT:

23 3.1.1. Effective immediately, Respondent shall fill out
24 all hazardous waste labels completely, including the date upon
25 which period of accumulation begins, the composition and
26 physical state of the waste and the hazardous properties of
27 the waste, in accordance with Title 22, Cal. Code Regs.,

section 66262.34 (f)(1) and (3).

1 3.1.2. Effective immediately, Respondent shall fill out
2 all hazardous waste manifests completely, including the
3 transporter's identification number and telephone number, in
4 accordance with Title 22, Cal. Code Regs., section 66262.20.

5 3.1.3. Effective immediately, Respondent shall record
6 all data required to be entered into inspection logs,
7 including the date and nature of repairs, in accordance with
8 Title 22, Cal. Code Regs. section 66265.15 (d).

9 3.1.4. Within 30 days of the effective date of this
10 Order, Respondent shall obtain authorization from the
11 Department to operate the silver recovery units, the
12 fluorescent light bulb crushers and open burn/open detonation
13 range as required in Article 9, Chapter 6.5, of the Health and
14 Safety Code. The Respondent shall also submit a map
15 identifying the location of each unit, including the silver
16 recycling units.

17 Respondent shall complete corrective action and submit a
18 signed Certification of Compliance to the person listed in
19 paragraph 3.2 within 30 days of the effective date of this
20 Order.

21 3.2. Submittals. All submittals from a Respondent
22 pursuant to this Order shall be sent simultaneously to:

23 Scott Simpson, Branch Chief
24 Facilities Management Branch
25 Department of Toxic Substances Control
26 1011 N. Grandview Blvd.
27 Glendale, CA 91201

 Roy Yeaman, Unit Chief
 Facilities Management Branch
 Department of Toxic Substances Control

1011 N. Grandview Blvd.
Glendale, CA 91201

1
2 3.3. Communications. All approvals and decisions of the
3 Department made regarding submittals and notifications will be
4 communicated to Respondent in writing by the Regional
5 Surveillance and Enforcement Branch Chief, Department of Toxic
6 Substances Control, or her/his designee. No informal advice,
7 guidance, suggestions, or comments by the Department regarding
8 reports, plans, specifications, schedules, or any other
9 writings by Respondent shall be construed to relieve
10 Respondent of the obligation to obtain such formal approvals
11 as may be required.

12 3.4. Department Review and Approval. If the Department
13 determines that any report, plan, schedule, or other document
14 submitted for approval pursuant to this Order fails to comply
15 with the Order or fails to protect public health or safety or
16 the environment, the Department may:

17 a. Modify the document as deemed necessary and
18 approve the document as modified or

19 b. Return the document to Respondent with
20 recommended changes and a date by which Respondent must submit
21 to the Department a revised document incorporating the
22 recommended changes.

23 3.5. Compliance with Applicable Laws: Respondent shall
24 carry out this Order in compliance with all local, State, and
25 federal requirements, including but not limited to
26 requirements to obtain permits and to assure worker safety.

27 3.6. Endangerment during Implementation: In the event

1 that the Department determines that any circumstances or
2 activity (whether or not pursued in compliance with this
3 Order) are creating an imminent or substantial endangerment to
4 the health or welfare of people on the site or in the
5 surrounding area or to the environment, the Department may
6 order Respondent to stop further implementation of this Order
7 for such period of time as needed to abate the endangerment.
8 Any deadline in this Order directly affected by a Stop Work
9 Order under this section shall be extended for the term of the
10 Stop Work Order.

11 3.7. Liability: Nothing in this Order shall constitute
12 or be construed as a satisfaction or release from liability
13 for any conditions or claims arising as a result of past,
14 current, or future operations of Respondent. Notwithstanding
15 compliance with the terms of this Order, Respondent may be
16 required to take further actions as are necessary to protect
17 public health or welfare or the environment.

18 3.8. Site Access: Access to the site shall be provided
19 at all reasonable times to employees, contractors, and
20 consultants of the Department, and any agency having
21 jurisdiction. Nothing in this Order is intended to limit in
22 any way the right of entry or inspection that any agency may
23 otherwise have by operation of any law. The Department and
24 its authorized representatives shall have the authority to
25 enter and move freely about all property at the site at all
26 reasonable times for purposes including but not limited to:
27 inspecting records, operating logs, and contracts relating to
the Site; reviewing the progress of Respondent in carrying out

the terms of this Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Order.

3.9. Sampling, Data, and Document Availability:

Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling, testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Order.

3.10. Governmental Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or

related parties specified in paragraph 3.16 in carrying out activities pursuant to this Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to the Order.

3.11. Additional Enforcement Actions: By issuance of this Order, the Department does not waive the right to take further enforcement actions.

3.12. Incorporation of Plans and Reports. All plans, schedules, and reports that require Departmental approval and are submitted by Respondent pursuant to this Order are incorporated in this Order upon approval by the Department.

3.13. Extension Request: If Respondent is unable to perform any activity or submit any document within the time required under this Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

3.14. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

3.15. Penalties for Noncompliance: Failure to comply with the terms of this Order may also subject Respondent to costs, penalties, and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by HSC section 25188 and other applicable provision of law.

3.16. Parties Bound: This Order shall apply to and be

1 binding upon Respondent, and its officers, directors, agents,
2 employees, contractors, consultants, receivers, trustees,
3 successors, and assignees, including but not limited to
4 individuals, partners, and subsidiary and parent corporations,
5 and upon any successor agency of the State of California that
6 may have responsibility for and jurisdiction over the subject
7 matter of this Order.

8 3.17. Compliance with Waste Discharge Requirements:
9 Respondent shall comply with all applicable waste discharge
10 requirements issued by the State Water Resources Control Board
11 or a California regional water quality control board.

12 PENALTY

13 4. Based on the foregoing DETERMINATION OF VIOLATIONS,
14 the Department sets the amount of Respondent's total penalty
15 at \$ 14,000.

16 RIGHT TO A HEARING

17 5. You may request a hearing to challenge the Order.
18 Appeal procedures are described in the attached Statement to
19 Respondent.

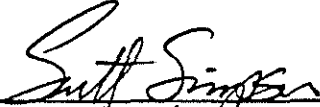
20 EFFECTIVE DATE

21 6. This Order is final and effective fifteen days from
22 the date it is served on you, unless you request a hearing
23 within the fifteen-day period.

24
25
26
27 TIME PERIODS

7. "Days" for purposes of this Order and Complaint means
calendar days.

Date of Issuance March 14, 1994.



Scott Simpson
Branch Chief
Department of Toxic Substances Control
1011 N. Grandview Ave.
Glendale, CA 91201

bcc: Mr. Bob Hoffman

Chief Counsel
Office of Legal Counsel
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Ms. Mary Locke, Chief
Office of Local Enforcement
Department of Toxic Substances Control
P.O. Box 806
Sacramento, CA 95812-0806

Mr. Charles McLaughlin
Branch Chief
Region 1 (Sacramento)
Surveillance and Enforcement Branch
Department of Toxic Substances Control
10151 Croydon Way
Sacramento, CA 95827

Ms. Charlene Williams
Branch Chief
Region 2 (Emeryville)
Surveillance and Enforcement Branch
Department of Toxic Substances Control
2151 Berkeley Way, Annex 7
Berkeley, CA 94704

Ms. Paula Rasmussen
Branch Chief
Region 4 (Long Beach)
Surveillance and Enforcement Branch
Department of Toxic Substances Control
245 West Broadway, Suite 350
Long Beach, CA 90802

Mr. Larry Matz
Acting Chief
HQ's Surveillance and Enforcement Branch
Department of Toxic Substances Control
P.O. Box 806
Sacramento, California 95812-0806

Mr. Bill Leonard
Executive Officer
California Regional Water Quality Control Board
Central Region
81 Higuera St., Suite 200
San Louis Obispo, CA 93401-5414

bcc: Ms. Maria Kelly
Waste Compliance Branch (H-4-1)
U. S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

Ms. Theodora Berger
Assistant Attorney General
Environmental Law Section
Department of Justice
300 South Spring Street
North Tower, 11th Floor
Los Angeles, CA 90012

Mr. Gary Erbeck, Director
Environmental Health Department
Santa Barbara County
120 Cremona Dr., Suite C
Goleta, CA 93117

Mr. Curt Batson, Program Manager
Environmental Health Department
Santa Barbara County
2125 South Centerpointe Parkway, Suite 33
Santa Maria, CA 93455-1340

STATEMENT TO RESPONDENT

In the Matter of: Docket No. DO 93/94-3-3009

Respondent : Vandenberg Air Force Base
 30th Space Wing/ET
 Bldg. 7015, Section 1B
 806 13th Street, Suite J
 Vandenberg Air Force Base, CA 93437-5242
 EPA ID # CA 9570025149

An Enforcement Order (Order) is attached to this statement and is hereby served upon you. The Order has been filed by the Department of Toxic Substances Control (Department).

You may choose:

- ▶ to comply with the Order immediately,
- ▶ to discuss the matter with the Department at the Informal Conference scheduled below, or
- ▶ to pursue a formal appeal.

COMPLIANCE

If you wish to comply with the Order, correct the violations as indicated in paragraph 3 of the Order and send to the person who issued the Order:

- ▶ a signed Certification of Compliance, if requested, and
- ▶ a check for the amount of the penalty made out to Department of Toxic Substances Control.

INFORMAL CONFERENCE

If you wish to discuss this matter with the Department, an Informal Conference has been scheduled for:

Date : March 29, 1994
Time : 9:00 a.m.
Location : DTSC Region 3
 1011 N. Grandview Avenue
 Glendale, CA 91201

You may inform the Department at the conference whether you wish to pursue a formal appeal or waive your right to a formal hearing, as explained below.

FORMAL APPEAL RIGHTS

YOU MUST FILE A WRITTEN REQUEST FOR A HEARING WITHIN FIFTEEN DAYS IF YOU WISH TO APPEAL.

Unless a written request for a hearing signed by you or on your behalf is delivered or mailed to the Department within fifteen days after you received a copy of the Order, you will be deemed to have waived your right to a hearing in this matter. If you do not file a timely hearing request, the Enforcement Order becomes final automatically.

The request for a hearing may be made by delivering or mailing one copy of the enclosed form entitled "Notice of Defense" or by delivering or mailing a Notice of Defense as provided in section 11506 of the Government Code to the person who issued the Order at the address following his or her signature on the Order or by delivering the Notice of Defense to the person conducting the Informal Conference at the time and place specified above.

The enclosed Notice of Defense, if signed and filed with the Department is deemed a specific denial of all parts of the Order, but you will not be permitted to raise any objection to the form of the Order unless you file a further Notice of Defense as provided in section 11506 of the Government Code within fifteen days after service of the Order upon you.

If you file a Notice of Defense within the time permitted, a hearing on the allegations made in the Order will be conducted by the Office of Administrative Hearings of the Department of General Services in accordance with the procedures specified in Health and Safety Code sections 25187 and Government Code sections 11507 et seq.

GENERAL INFORMATION

You may but are not required to be represented by counsel at any or all stages of these proceedings.

The hearing may be postponed for good cause. If you have good cause, you must notify the Department within ten working days after you discover the good cause. Failure to notify the Department within ten days will deprive you of a postponement.

Copies of sections 11507.5, 11507.6, and 11507.7 of the Government Code are attached. If you desire the names and addresses of witnesses or an opportunity to inspect and copy items in possession, custody, or control of the Department, you may contact the person issuing the Order at the address indicated at the end of the Order.

GOVERNMENT CODE

Section 11507.5. Exclusivity of discovery provisions

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

Section 11507.6. Request for discovery

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after such service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to such person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that such reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of such oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

(g) In any proceeding under subdivision (i) or (j) of Section 12940, or Section 19572 or 19702, alleging conduct which constitutes sexual harassment, sexual assault, or sexual battery, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is not discoverable unless it is to be offered at a hearing to attack the credibility of the complainant as provided for under subdivision (j) of Section 11513. This subdivision is intended only to limit the scope of discovery; it is not intended to effect the methods of discovery allowed under this section.

Section 11507.7. Petition to compel discovery; Order; Sanctions

(a) Any party claiming his request for discovery pursuant to Section 11507.6 has not been complied with may serve and file a verified petition to compel discovery in the superior court for the county in which the administrative hearing will be held, naming as respondent the party refusing or failing to comply with Section 11507.6. The petition shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why such matter is discoverable under this section, and the ground or grounds of respondent's refusal so far as known to petitioner.

(b) The petition shall be served upon respondent party and filed within 15 days after the respondent party first evidenced his failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, whichever period is longer. However, no petition may be filed within 15 days of the date set for commencement of the administrative hearing except upon order of

the court after motion and notice and for good cause shown. In acting upon such motion, the court shall consider the necessity and reasons for such discovery, the diligence or lack of diligence of the moving party, whether the granting of the motion will delay the commencement of the administrative hearing on the date set, and the possible prejudice of such action to any party.

(c) If from a reading of the petition the court is satisfied that the petition sets forth good cause for relief, the court shall issue an order to show cause directed to the respondent party; otherwise the court shall enter an order denying the petition. The order to show cause shall be served upon the respondent and his attorney of record in the administrative proceeding by personal delivery or certified mail and shall be returnable no earlier than 10 days from its issuance nor later than 30 days after the filing of the petition. The respondent party shall have the right to serve and file a written answer or other response to the petition and order to show cause.

(d) The court may in its discretion order the administrative proceeding stayed during the pendency of the proceeding, and if necessary for a reasonable time thereafter to afford the parties time to comply with the court order.

(e) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that such matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under such provisions, the court may order lodged with it such matters as are provided in subdivision (b) of Section 915 of the Evidence Code and examine such matters in accordance with the provisions thereof.

(f) The court shall decide the case on the matters examined by the court in camera, the papers filed by the parties, and such oral argument and additional evidence as the court may allow.

(g) Unless otherwise stipulated by the parties, the court shall no later than 30 days after the filing of the petition file its order denying or granting the petition, provided, however, the court may on its own motion for good cause extend such time an additional 30 days. The order of the court shall be in writing setting forth the matters or parts thereof the petitioner is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the clerk upon the parties. Where the order grants the petition in whole or in part, such order shall not become effective until 10 days after the date the order is served by the clerk. Where the order denies relief to the petitioning party, the order shall be effective on the date it is served by the clerk.

(h) The order of the superior court shall be final and not subject to review by appeal. A party aggrieved by such order, or any part thereof, may within 15 days after the service of the

superior court's order serve and file in the district court of appeal for the district in which the superior court is located, a petition for a writ of mandamus to compel the superior court to set aside or otherwise modify its order. Where such review is sought from an order granting discovery, the order of the trial court and the administrative proceeding shall be stayed upon the filing of the petition for writ of mandamus, provided, however, the court of appeal may dissolve or modify the stay thereafter if it is in the public interest to do so. Where such review is sought from a denial of discovery, neither the trial court's order nor the administrative proceeding shall be stayed by the court of appeal except upon a clear showing of probable error.

(i) Where the superior court finds that a party or his attorney, without substantial justification, failed or refused to comply with Section 11507.6, or, without substantial justification, filed a petition to compel discovery pursuant to this section, or, without substantial justification, failed to comply with any order of court made pursuant to this section, the court may award court costs and reasonable attorney fees to the opposing party. Nothing in this subdivision shall limit the power of the superior court to compel obedience to its orders by contempt proceedings.